

# SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

## TWENTY-THIRD DAY

(Wednesday, March 18, 2009)

The Senate met at 11:10 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

The Reverend Dr. R. Bruce Webb, First Baptist Church of The Woodlands, offered the invocation as follows:

Our Father, thank You for these men and women who serve our state in the Texas Senate. I ask You to bless their families and their businesses. Bless the time and effort they give to help the people of our state live better lives. Aid them in doing what is right. Rescue them from pettiness and selfishness. Help them reject the temptation to use dishonorable methods to try to bring about honorable results. Give them solutions to our many problems that are good for all. I pray for these men and women of the Senate the rare and special courage to do what is best for our state even if it is not always in their own personal best interest. Empower them to be their very best for our state and for others. And now, with respect toward all people of faith and also to those who do not have faith, I pray this prayer in the name of the risen lord and my savior, Jesus Christ. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

### CO-AUTHORS OF SENATE BILL 19

On motion of Senator Patrick, Senators Averitt, Davis, Deuell, Fraser, Gallegos, Harris, Lucio, Seliger, Shapiro, Shapleigh, Uresti, Watson, Wentworth, and Zaffirini will be shown as Co-authors of SB 19.



**CO-AUTHOR OF SENATE BILL 52**

On motion of Senator Zaffirini, Senator Uresti will be shown as Co-author of SB 52.

**CO-AUTHOR OF SENATE BILL 112**

On motion of Senator Ellis, Senator Van de Putte will be shown as Co-author of SB 112.

**CO-AUTHORS OF SENATE BILL 175**

On motion of Senator Shapiro, Senators Nelson, Seliger, and Wentworth will be shown as Co-authors of SB 175.

**CO-AUTHOR OF SENATE BILL 188**

On motion of Senator Deuell, Senator Wentworth will be shown as Co-author of SB 188.

**CO-AUTHOR OF SENATE BILL 575**

On motion of Senator Davis, Senator Nelson will be shown as Co-author of SB 575.

**CO-AUTHOR OF SENATE BILL 607**

On motion of Senator Uresti, Senator Wentworth will be shown as Co-author of SB 607.

**CO-AUTHOR OF SENATE BILL 631**

On motion of Senator Davis, Senator Ellis will be shown as Co-author of SB 631.

**CO-AUTHOR OF SENATE BILL 686**

On motion of Senator Davis, Senator Nelson will be shown as Co-author of SB 686.

**CO-AUTHOR OF SENATE BILL 687**

On motion of Senator Hegar, Senator Uresti will be shown as Co-author of SB 687.

**CO-AUTHOR OF SENATE BILL 841**

On motion of Senator Averitt, Senator Williams will be shown as Co-author of SB 841.

**CO-AUTHORS OF SENATE BILL 843**

On motion of Senator Uresti, Senators Davis and Huffman will be shown as Co-authors of SB 843.

**CO-AUTHOR OF SENATE BILL 915**

On motion of Senator Ellis, Senator Hinojosa will be shown as Co-author of SB 915.

**CO-AUTHOR OF SENATE BILL 972**

On motion of Senator Averitt, Senator Nelson will be shown as Co-author of SB 972.

**CO-AUTHOR OF SENATE BILL 985**

On motion of Senator Davis, Senator Gallegos will be shown as Co-author of SB 985.

**CO-AUTHOR OF SENATE BILL 1052**

On motion of Senator Uresti, Senator Van de Putte will be shown as Co-author of SB 1052.

**CO-AUTHOR OF SENATE BILL 1084**

On motion of Senator Ellis, Senator Gallegos will be shown as Co-author of SB 1084.

**CO-AUTHOR OF SENATE BILL 1155**

On motion of Senator Davis, Senator Ellis will be shown as Co-author of SB 1155.

**CO-AUTHOR OF SENATE BILL 1157**

On motion of Senator Davis, Senator Ellis will be shown as Co-author of SB 1157.

**CO-AUTHOR OF SENATE BILL 1345**

On motion of Senator Watson, Senator Deuell will be shown as Co-author of SB 1345.

**CO-AUTHOR OF SENATE BILL 1589**

On motion of Senator Ogden, Senator Wentworth will be shown as Co-author of SB 1589.

**CO-SPONSOR OF HOUSE CONCURRENT RESOLUTION 36**

On motion of Senator Nelson, Senator Estes will be shown as Co-sponsor of HCR 36.

**RESOLUTION SIGNED**

The President announced the signing of the following enrolled resolution in the presence of the Senate: **HCR 87**.

**MESSAGES FROM THE GOVERNOR**

The following Messages from the Governor were read and were referred to the Committee on Nominations:

Austin, Texas  
March 17, 2009

TO THE SENATE OF THE EIGHTY-FIRST LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:



To be a member of the Texas Public Finance Authority for a term to expire  
February 1, 2015:

Rodney Keith Moore  
Lufkin, Texas

(Mr. Moore is replacing H. L. Bert Mijares, Jr., of El Paso whose term expired)

To be members of the State Committee of Examiners in the Fitting and Dispensing of  
Hearing Instruments for terms to expire as indicated:

To Expire December 31, 2009:

Cindy Steinbart  
Round Rock, Texas

(replacing Sara Ann Garza of Mission who resigned)

To Expire December 31, 2011:

Robert J. Gebhard, Jr.  
Pearland, Texas

(replacing Audrey McDonald of Georgetown who resigned)

To be members of the Trinity River Authority Board of Directors for terms to expire  
March 15, 2015:

Ronald J. Goldman  
Fort Worth, Texas

(Mr. Goldman is being reappointed)

John W. Jenkins  
Hankamer, Texas

(Mr. Jenkins is being reappointed)

Keith W. Kidd  
Dallas, Texas

(replacing Katrina Keyes of Dallas whose term expired)

Emmanuel "Manny" Rachal  
Livingston, Texas

(Mr. Rachal is being reappointed)

Ronald Kevin Maxwell  
Crockett, Texas

(Mr. Maxwell is being reappointed)

Barbara Nash  
Arlington, Texas

(Ms. Nash is being reappointed)

Shirley K. Seale  
Anahuac, Texas

(Ms. Seale is being reappointed)

Kimberly Chris "K. C." Wyatt  
Corsicana, Texas

(Mr. Wyatt is being reappointed)

To be members of the Credit Union Commission for terms to expire February 15, 2015:

David Cibrian  
San Antonio, Texas

(replacing Mary Ann Grant of Houston whose term expired)

Gary L. Janacek  
Belton, Texas

(Mr. Janacek is being reappointed)

A. John Yoggerst II  
San Antonio, Texas

(replacing Rusty Ballard of Forresteron whose term expired)

Respectfully submitted,

/s/Rick Perry  
Governor

#### **PHYSICIAN OF THE DAY**

Senator Wentworth was recognized and presented Dr. E. David Pampe of Austin as the Physician of the Day.

The Senate welcomed Dr. Pampe and thanked him for his participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

#### **GUESTS PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate Brittany Fisk, Abigail Gorham, and Joseph Miller of the Gifted and Talented Program at Oak Crest Intermediate School in San Antonio, serving today as Honorary Senate Pages, accompanied by their teacher, Beverly Weatherington.

The Senate welcomed its guests.

#### **GUEST PRESENTED**

Senator Huffman was recognized and introduced to the Senate her son, Luke Lawyer.

The Senate welcomed its guest.

#### **GUESTS PRESENTED**

Senator West was recognized and introduced to the Senate a delegation of students representing the Student Advisory Committee of Texas Senatorial District 23, accompanied by their teachers, parents, and sponsors.

The Senate welcomed its guests.

#### **SENATE RESOLUTION 438**

Senator Hinojosa offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the Lipan Apache Tribe of Texas; and

WHEREAS, The Lipan Apache Tribe of Texas is the present-day incarnation of the clans, bands, and divisions historically known as the Lipan Apaches, who have lived in Texas and northern Mexico for 300 years; and

WHEREAS, The Lipan Apaches have a culture rich in tradition and a heritage that has been handed down from one generation to the next; they have maintained their sense of community from the days of treaties until the present day despite social, economic, and military instabilities; and

WHEREAS, The Lipan Apaches have enjoyed government to government relations with Spain, Mexico, the Republic of Texas, the United States of America, and the State of Texas; these relations have taken the form of treaties, alliances, and pledges of friendship; and

WHEREAS, The Lipan Apaches have faithfully served when called upon to bear arms in protection of their fellow Texans and Americans; the tribe honors many veterans who served as scouts in World War I, World War II, Korea, Vietnam, and Iraq; the Tribal Shield of the Lipan Apache proudly flies beside the American flag in Afghanistan, where one of the Lipan Apache Tribe of Texas warriors is serving on his second tour; and

WHEREAS, The Lipan Apaches of today continue to serve their communities as police officers, ministers, nurses, and school teachers and in many other occupations that speak to integrity and fidelity of service to others; and

WHEREAS, The treaty closest to the heart of the Lipan Apache is the Live Oak Treaty of 1838; the promises of "Peace and Perpetual Friendship" live today as they did when President Sam Houston and the Lipan Apache pledged this commitment to one another; now, therefore, be it

RESOLVED, That the Senate of the State of Texas hereby recognize the Lipan Apache Tribe of Texas and commend it on its many valuable contributions to this state; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the tribe as an expression of highest esteem from the Texas Senate.

SR 438 was read and was adopted without objection.

#### **GUESTS PRESENTED**

Senator Hinojosa was recognized and introduced to the Senate representatives of the Lipan Apache Tribe of Texas: Bernard F. Barcena, Jr., Chair; Robert Soto, Vice-chair; Juan Z. Soliz, Treasurer; Alma Cruz, Clerk of the Nation and Clan Mother; and William Larew, Tribal Administrator; accompanied by other representatives.

The Senate welcomed its guests.

#### **GUEST PRESENTED**

Senator Nelson was recognized and introduced to the Senate Michelle Aguilar of Saginaw, winner on *The Biggest Loser* television show.

The Senate welcomed its guest.



**INTRODUCTION OF  
BILLS AND RESOLUTIONS POSTPONED**

The President announced that the introduction of bills and resolutions on first reading would be postponed until the end of today's session.

There was no objection.

**BIRTHDAY GREETINGS EXTENDED**

Senator Williams was recognized and, on behalf of the Senate, extended birthday greetings to Senator Watson.

**CONCLUSION OF MORNING CALL**

The President at 11:39 a.m. announced the conclusion of morning call.

**PERSONAL PRIVILEGE STATEMENT**

Senator Lucio was recognized to speak on a matter of personal privilege.

**AT EASE**

The President at 11:44 a.m. announced the Senate would stand At Ease subject to the call of the Chair.

**IN LEGISLATIVE SESSION**

The President at 12:13 p.m. called the Senate to order as In Legislative Session.

**SENATE BILL 362 ON THIRD READING**

The President laid before the Senate **SB 362** by Senator Fraser at this time on its third reading and final passage (set as special order):

**SB 362**, Relating to requiring a voter to present proof of identification.

The bill was read third time and was passed by the following vote: Yeas 19, Nays 12.

Yeas: Averitt, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

**LETTER FROM DEPUTY SECRETARY OF STATE**

Senator Van de Putte was recognized to read and to submit in writing the following letter relating to **SB 362** from the Deputy Secretary of State:

Coby Shorter, III  
Deputy Secretary of State  
State of Texas

March 11, 2009

The Honorable Leticia Van de Putte  
Texas Senate  
P.O. Box 12068 – Capitol Station  
Austin, Texas 78711

Dear Senator Van de Putte:

Thank you for the opportunity to serve as a resource witness on Senate Bill 362. During my testimony you asked several questions which I needed to research. Below, please find your questions and my responses.

Question: Explain the difference between a Citizenship Certificate and Citizenship Papers.

Please know the Office of the Secretary of State does not have jurisdiction over U.S. citizenship issues; thus, our response is based on information from the U.S. Citizenship and Immigration Services. Based on preliminary research, we have determined that a Certificate of U.S. Citizenship is a document issued by the United States government as proof of U.S. citizenship. Individuals who are eligible to apply for the certificate include those who obtained U.S. citizenship while residing in the United States or individuals who were born outside the United States to U.S. citizens. Specifically, children born of U.S. citizens who were born abroad are eligible. In addition, a child whose parent or parents became naturalized while the child was under 18 years of age is also eligible for this document. The Certificate of U.S. Citizenship contains a photograph and qualifies as proof of identity under the proposed amendment to Section 63.0101(a) of the Texas Election Code (the "Code").

"United States Citizenship Papers" are one of the authorized forms of identification in the proposed amendment to Section 63.0101(b) of the Code. According to the U.S. Citizenship and Immigration Services, the following documents generally constitute proof of U.S. citizenship: birth certificate, U.S. Passport, Certificate of Citizenship, and Naturalization Certificate. These four documents would appear to qualify as "United States Citizenship Papers" under the proposed amendment to Section 63.0101. A U.S. Passport and a Certificate of Citizenship are specifically listed as forms of photo identification authorized under the proposed Section 63.0101(a), so it appears that these documents qualify under both 63.0101(a) and (b). A Certificate of Naturalization is a document issued by the United States government (or before October 1, 1991 by a federal or state court) as proof of a person having obtained U.S. citizenship through naturalization. A Certificate of Naturalization contains the person's photograph. A birth certificate does not contain a photograph.

Question: How will inconsistencies between a temporary address appearing on an authorized identification document and a permanent address appearing on the voter registration list of military and student voters be treated if SB 362 were to become law?

Senate Bill 362 requires a voter to provide proof of his or her identity and does not require a voter to provide proof of residence. If there was an inconsistency between an address that appeared on an authorized form of identification and the voter registration roll, that would not be grounds to disqualify the voter. As long as the voter still claimed the address that appeared on the voter registration list as his or her permanent residence address, the voter would be accepted for voting. Accordingly, if a voter presented a valid form of identification as proposed under Senate Bill 362, which contained an address different from the address on the list of registered voters, that voter would be allowed to vote.



Question: Does the Secretary of State track the racial status of registered voters? If not, how will the state prove that Senate Bill 362 does not have an adverse impact on minority voters when the state submits the bill for preclearance?

Because racial status is not considered in a person's eligibility to register to voter, the state prescribed voter registration application does not request this information from voters. As a result, the state does not have statistics regarding the race or ethnicity of registered voters in Texas. We do have data on the number of registered voters with Hispanic surnames, but this data is inconclusive as it simply matches the surname of registered voters against a list of identified Hispanic surnames provided by the U.S. Census Bureau.

Every submission to the U.S. Department of Justice is different based on the unique aspects of the legislation. For instance, the Texas Legislative Council assisted with the compilation of data on race and ethnicity for redistricting bills. A similar effort to obtain such demographics may be required for a voter identification bill. Historically, we have also worked with legislators to ensure the best data available is included in submissions.

Thank you for the opportunity to research these issues. If I have inadvertently omitted or misunderstood your questions, please let me know.

Sincerely,

/s/ Coby Shorter, III

Deputy Secretary of State

#### **STATEMENT REGARDING VOTES CAST ON**

#### **SENATE BILL 362**

#### **(Senate Rule 17.01)**

Senator West submitted the following statement:

We offer the following statements with respect to our votes on Senate Bill 362 and ask that they be spread upon the journal of the Senate:

1. The Senate is comprised of 31 members, 8 of whom are ethnic minorities: Ellis, West, Gallegos, Hinojosa, Lucio, Uresti, Van de Putte, and Zaffirini.

2. On January 14, 2009, a motion was made to amend the previous rules of the Senate to allow for legislation relating to voter identification requirements, after being reported favorably from a Committee of the Whole Senate, to be set as a special order, therefore bypassing the need for a two-thirds vote of the Senate at any point during Senate deliberations, for legislation addressing only this subject. The motion prevailed by a vote of 18-13. All 8 Senators who are ethnic minorities voted against this motion.

3. On March 10-11, 2009, the Senate convened as a Committee of the Whole Senate, and took up and passed Senate Bill 362, which relates to voter identification requirements, by a vote of 20 to 12. All Senators who are ethnic minorities voted against passage of the bill from the Committee of the Whole Senate.